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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 81-2245

STATE OF NEVADA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

No. 81-2276

TRUCKEE-CARSON IRRIGATION DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

No. 82-38

PYRAMID LAKE PAIUTE TRIBE OF INDIANS, CROSS-PETITIONER

v.

TRUCKEE-CARSON IRRIGATION DISTRICT, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE OF THE PYRAMID LAKE PAIUTE TRIBE OF INDIANS TO MOTION OF UNITED STATES FOR LEAVE TO FILE POST-ARGUMENT MEMORANDUM

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of Indians

IN THE SUPREME COURT OF THE UNITED STATES

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This Response is filed pursuant to Supreme Court Rule 42.4.

The Pyramid Lake Tribe supports the Motion of the United States for Leave to File a Post-Argument Memorandum in order to clarify certain matters raised at oral argument. The discussion in the Post-Argument Memorandum regarding the water supply contracts between the United States and Newlands Project landowners and the relationship of those contracts to the decree in Orr Ditch may be of assistance to the Court as a backdrop for

consideration of the res judicata issues in this case.

The Tribe emphasizes, however, that in this case it is not necessary to determine the legal incidence of the relationship between the United States and the landowners under those contracts or the existence, nature or extent of any rights of Newlands Project landowners under the Orr Ditch Decree itself because that decree cannot in any event bar the assertion of the Tribe's reserved fishery water right. This is so for the three principal reasons that the Tribe has stressed. These arguments are:

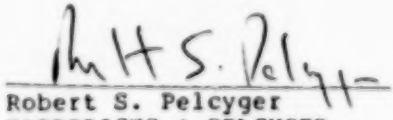
1. That the lack of adequate notice to the Tribe and the existence of the government's acknowledged conflict of interest deprived the Tribe of a full, fair and meaningful opportunity to be heard (the due process issue);

2. That the fishery water right was not part of the government's Orr Ditch cause of action and that it could not and should not have been litigated in Orr Ditch (the justiciability, or identity of claims issue); and

3. That the Tribe cannot be barred from asserting its fishery water rights claim against TCID under the rule set forth in Section 38 of the Restatement (Second) of Judgments (1982) (the lack of adversity issue which was the basis of the decision below rejecting TCID's res judicata defense).

Dated: May 9, 1983.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the attached Response of the Pyramid Lake Paiute Tribe of Indians to Motion of United States for Leave to File Post-Argument Memorandum was mailed this 10th day of May 1983 by first class U.S. mail postage prepaid to the attached service list.

My Commission Expires March 11, 1986
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